

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 36200
Docket No. MS-35865
02-3-99-3-872

The Third Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (C. W. Meckley
(Burlington Northern Santa Fe Railway (former Fort
(Worth and Denver Railway Company)

STATEMENT OF CLAIM:

“Claim of C. W. Meckley that:

This is to serve notice, as required by the Uniform Rules of Procedure of the Railroad Adjustment Board effective May 16, 1994, of my intention to file an Ex Parte Submission within 75 days covering an unadjusted dispute between me and the Burlington Northern Santa Fe Railroad involving the following:

The System of the Brotherhood claims in behalf of C. W. Meckley, (464-23-3582), service date 7/23/1981, that his dismissal from Carrier's service, for alleged violation of rules S-28.6:Conduct, S-28.7:Altercation, S-28.14:Duty-Reporting or absence of the BNSF Safety Rules and General Responsibilities for All Employees; Rule 1.13 of the BNSF Maintenance of Way Operating Rules; and Section 12C of the BNSF Policy on the Use of Alcohol and Drugs; is based upon predisposition, assumption, and Carrier's pointed personal bias toward claimant in a negative manner, rather than the facts and testimony. The only alleged violation that can be substantiated from the transcripts of the investigation is that of claimant's alleged violation of Rule S-28.6, Conduct; which alone is not cause for dismissal.

Remedy Sought: I need to be reinstated to my job and I have been a loyal employee for 18 years to the BNSF Railroad. Thank You.”

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On June 21, 1997, Claimant C. L. Meckley and D. D. Parks were working together on a road crossing on the Thayer Subdivision. Parks was operating a backhoe when the Claimant allegedly swung a shovel and struck Parks on the left arm. As a result of the incident, the Claimant was taken to a field office where Division Engineer D. Gabriel determined that Meckley's "irrational and violent action" warranted a probable cause test for alcohol and drugs. Although the Claimant was instructed to wait at the field office until a Carrier Special Agent arrived to escort him to a facility for the probable cause test, the Claimant failed to follow those instructions and left the field office prior to the test.

Shortly thereafter, the Claimant received a Notice to attend a July 22, 1998 Investigation regarding his alleged violation of Rules: S-28.6-Conduct, S-28.7-Altercations and S-28.14-Duty, Reporting or Absence, Rule 1.13-Reporting and Complying with Instructions and Section 12-Dismissal, of the Carrier's Policy on the Use of Drugs and Alcohol. The Investigation was held as scheduled, and on August 12, 1998, the Claimant was notified that he had been found guilty as charged, and dismissed from service.

In October 6, 1998 correspondence, the Organization protested the Claimant's dismissal based upon the Carrier's alleged "failure" to substantiate its charges. The General Chairman further alleged that the Claimant was "singled out" because the Carrier did not "subject Mr. Parks to the same negative prejudicial treatment Claimant was subjected to." The General Chairman went on to assert that the Claimant was arbitrarily and summarily removed from service pending Investigation. The General Chairman went on to admit however, that the Claimant's June 21 actions clearly violated Rule S-28.6 - Conduct.

For his part, the Claimant maintained that Parks was "inexperienced" on the backhoe and a "joker" who engaged in "horseplay." The Claimant asserts that he "never hit the kid," and merely swung the shovel to get Park's "attention" so that he would not "get run over."

With respect to leaving the property before he submitted to the requisite drug and alcohol test, the Claimant maintains that the Carrier made him wait "for three (3) hours in the hot sun" prior to administering the requisite test, and that he "got tired and left."

The Carrier denied the claim contending that the Claimant's violent conduct, failure to comply with instructions and refusal to submit to an alcohol and drug test were in clear violation of Carrier Rules. Regarding the Organization's assertion that Parks had not been subjected to similar "prejudicial treatment," the Carrier noted that the Claimant was the "sole aggressor" in the altercation rendering the discipline of dismissal appropriate.

The parties were unable to resolve the dispute and on October 25, 1999 Claimant Meckley progressed the issue to the Third Division.

At the outset, there can be no dispute that the Claimant failed to follow Division Engineer Gabriel's explicit directive to remain at the field office until a Carrier Special Agent arrived to escort him to a facility for the probable cause test, thereby violating Rule 1.13 of the Agreement.

With respect to the other Rules for which he was cited, during the Claimant's Investigation it was determined that the June 21, 1997 assault was the culminating act of a series of intimidating, irrational and violent actions toward Parks. Specifically, according to Parks' unrefuted testimony, the June 21 assault was the third such action by the Claimant during the course of their work on the crew. The record further demonstrates that the Claimant was previously dismissed from the Carrier's service on July 16, 1990 for insubordination and a physical altercation with his supervisor. Some three months later the Claimant was issued a last chance leniency reinstatement.

In that connection, and pertinent to this issue, public records demonstrate that the Claimant has engaged in similar behavior on at least two occasions outside the workplace, and ultimately pled guilty to an aggravated assault charge with a deadly weapon and placed on a ten-year probation.

The Carrier has demonstrated that, on June 21, 1997 the Claimant assaulted fellow employee D. Parks by striking him on the arm with a shovel, and in doing so, violated each of the Rules for which he was cited. The record further demonstrates that the Claimant was the sole aggressor in the altercation. Nothing presented in this record provides any basis for this Board to disturb the Carrier's determination to discharge the Claimant. Therefore, this claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 24th day of September 2002.